

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

and
ORDER NO. 923
CASE NO. 99-08

**(TEXT AMENDMENT – DOWNTOWN HISTORIC PROPERTIES RESIDENTIAL
REHABILITATION INCENTIVE PROGRAM)**
JULY 10, 2000

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in Section 1 of the Zoning Act of June 20, 1938, [52 stat. 797, as amended, D.C. Code § 5-413 (1994)], and having held a public hearing as required by Section 3 of the Act [D.C. Code § 5-415 (Supp. 1999)], hereby gives notice of the adoption of the following text amendment to Chapter 7 (Commercial Districts) and Section 1709 of Chapter 17 (the Transferable Development Rights Section of Downtown Development District Chapter) of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (DCMR). The Zoning Commission took final action to adopt the amendment on July 10, 2000.

The Zoning Commission initiated this rulemaking in response to an application from Summit Properties, Inc. The proposed amendment would create an incentive program of transferable development rights (TDRs) for property owners who retain historic properties within the C-4 (Central Business District) Zone as “whole buildings” and rehabilitate them for new apartment house use. The amendment seeks to encourage the construction of new housing to accomplish the balanced mixture of uses essential to a “Living Downtown” and to encourage historic preservation policies espoused in the District of Columbia Comprehensive Plan. The TDR incentive would improve the financial feasibility of the applicant’s proposed rehabilitation and construction project at the University Club/United Mine Workers Building at 900 15th Street, N.W. (Square 199, Lot 64). A number of other property owners in the C-4 Zone could also avail themselves of the TDR program. The amendment allows up to 50 percent of the TDRs to vest at the building permit stage, with the remainder to vest upon completion of the project.

A Notice of Public Hearing containing the proposed amendment was published in the *D.C. Register* at 46 DCR 10,625 (Dec. 31, 2000), and a public hearing was scheduled for February 17, 2000. The hearing was continued to April 13, 2000, to accommodate the request of the Office of Planning (OP) for additional time to review the TDR issues raised by the proposal.

The OP submitted a report dated April 13, 2000, and a supplemental report dated April 21, 2000, recommending that the Zoning Commission not adopt the amendment as proposed by Summit Properties. The OP was concerned about the creation of a new source of housing-related TDRs

outside of the Downtown Development District boundaries and the potential for a glut of TDRs in the marketplace, which could undermine the value of TDRs as a tool for achieving preferred uses. It suggested limiting any new TDRs created through the applicant's proposal to the historic preservation component and applying the present vesting provisions for historic preservation TDRs. The Zoning Commission has given great weight to OP's recommendation and agrees that it should proceed cautiously in amending any TDR-related regulations. The Commission notes, however, that the amendment is narrowly drawn and promotes two significant Comprehensive Plan policies: housing and historic preservation. The alternative incentives proposed by OP, including tax relief legislation, are not certain and would involve significant delays in any event. The 50 percent vesting provisions acknowledge the high costs and time constraints of getting a project to the building permit stage, while preventing abuses by requiring completion of half of the rehabilitation in accordance with the building permit. The Commission thus believes it is appropriate to proceed with the applicant's proposal since it will provide substantial benefits to the broader downtown area.

There was no ANC report in this case. The Downtown Cluster of Congregations and the Downtown Housing Now Committee supported the text amendment on the grounds that it would encourage historic preservation and residential development in the downtown area, while aiding commercial revitalization in appropriate receiving zones. The Memorial Evangelical Lutheran Church also supported creating an additional incentive for increased housing in the downtown area.

After the public hearing, the Zoning Commission took proposed action, pursuant to 11 DCMR § 3027.2, at its regular monthly meeting on May 8, 2000, to approve the proposed amendment.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 19, 2000, at 47 DCR 3540, for a 30-day notice and comment period. The notice was also referred to the National Capital Planning Commission (NCPC) for review pursuant to the Self-Government and Governmental Reorganization Act. The NCPC, by delegated action of its Acting Executive Director dated June 2, 2000, indicated that the proposed amendment would serve to promote the preservation of historic properties and therefore would not be adverse to the federal interest nor be inconsistent with the Comprehensive Plan for the Nation's Capital. The Office of the Corporation Counsel (OCC), as part of its legal sufficiency review, revised the organization and wording of the proposed amendment. The OCC determined that with the proposed changes the rulemaking meets its standards of legal sufficiency. The applicant submitted a letter in support of the proposed amendment. No other comments were received.

The Zoning Commission reviewed the case at its regular monthly meeting on July 10, 2000. The Commission finds that the proposed amendment to the Zoning Regulations is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, and that the revisions proposed by OCC should be adopted. No substantive changes to the proposed amendment as published have been made.

This final rulemaking is effective upon publication in the *D.C. Register*.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders **APPROVAL** of the following amendments to the Zoning Regulations, Title 11 of the DCMR:

Chapter 7 is amended by adding a new section, **Section 755**, to read as follows:

755 Downtown Historic Properties Residential Rehabilitation Incentive Program (C-4)

- 755.1 This section authorizes the transfer of development rights from a qualifying rehabilitation project within the C-4 Zone to a receiving zone or site established pursuant to §1709.
- 755.2 A rehabilitation project within the C-4 Zone that provides for the construction of new apartment house use on-site shall qualify to earn transferable development rights provided the project:
- (a) Retains and rehabilitates a building, consistent with plans approved pursuant to D.C. Law 2-144, that is designated as a historic landmark or determined to be a contributing building to a historic district by the Historic Preservation Review Board;
 - (b) Retains sufficient historic fabric to constitute “whole building retention,” as determined by the Historic Preservation Division, Department of Consumer and Regulatory Affairs; and
 - (c) Is undertaken pursuant to a building permit issued after May 8, 2000.
- 755.3 A rehabilitation project qualifying under §755.2 shall earn two (2) square feet of transferable development rights for each one (1) square foot of new apartment house use developed.
- 755.4 In order to convey the transferable development rights provided for in this section, the owner of the building shall execute, file, and record an instrument of transfer as provided in §1709.
- 755.5 Up to one-half (1/2) of the total number of transferable development rights generated by a qualifying rehabilitation project shall vest and may be transferred upon the owner’s certification in writing and the Zoning Administrator’s concurrence that fifty percent (50%) of the rehabilitation of the landmark or contributing building is complete and constructed in a manner consistent with the building permit for the project.
- 755.6 The remainder of the total number of transferable development rights generated by a qualifying rehabilitation project shall vest and may be transferred after the

owner obtains written certification from the Historic Preservation Division of the completion, consistent with the building permit, of the rehabilitation of the landmark or contributing building.

Chapter 17 is amended as follows:

Subsection 1709.2 is amended to read as follows:

1709.2 Transferable development rights shall be generated either by historic preservation as provided in §1707, bonus uses pursuant to the subarea provisions of §§1703 through 1705, or the residential development provisions of §1706.3. Transferable development rights shall also be generated pursuant to the downtown historic properties residential rehabilitation incentive provisions of §755.


Subsection 1709.3 is amended to read as follows:

1709.3 No transfer of development rights from historic properties pursuant to §§755 and 1707 nor of bonus density derived from bonus uses, shall be effective under this section unless an instrument, approved by the Corporation Counsel to be legally sufficient to effect such a transfer and approved in content by the Zoning Administrator and the Director, Office of Planning, has been entered into among all of the parties concerned, including the District of Columbia.

Vote of the Zoning Commission taken at its public meeting on May 8, 2000 to adopt the proposed rulemaking: 4 – 1 (Herbert M Franklin, Kwasi Holman, Anthony J. Hood, and Carol J. Mitten to adopt; John G. Parsons by absentee vote, to oppose.

This order was adopted by the Zoning Commission at its public meeting on July 10, 2000, by a vote of 4 - 0 (Carol J. Mitten, Kaws Holman, Anthony J. Hood and John G. Parsons to **ADOPT** Z.C. Order No. 923, Herbert M. Franklin, not present, not voting).

In accordance with the provisions of 11 DCMR 3028.8, this order shall become final and effective upon publication in the D.C. Register; that is, on JUL 21 2000.


ANTHONY J. HOOD
Chairman
Zoning Commission


JERRILY R. KRESS
Director
Office of Zoning